

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

HOLLIS HOLSCHER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Case No. 1:12-cv-684

Barrett, J.  
Bowman, M.J.

**REPORT & RECOMMENDATION**

On September 10, 2012, Defendant removed this employment discrimination case from Hamilton County Municipal Court, Small Claims Division, to this Court. On September 20, 2012, Defendant filed a motion to dismiss, arguing that Plaintiff's federal tort claim should be dismissed based upon the Plaintiff's failure to name the correct Defendant, and failure to first exhaust her administrative remedies.

S.D. Ohio Civ. R. 7.2(a)(2) provides that a memorandum in opposition "shall be served and filed within twenty-one (21) days from the date of service set forth in the certificate of service attached to the Motion." When more than 21 days passed without receipt of a response from the *pro se* Plaintiff, this Court directed Plaintiff to "**SHOW CAUSE** ...why the Defendants' motion to dismiss (Doc.3) should not be construed as unopposed and granted for the reasons stated." On November 13, 2012, Plaintiff filed a response to the "show cause" order in which she asks this Court to dismiss her

complaint “without prejudice,” (Doc. 6 at 1, emphasis original), explaining that she seeks to preserve her right to bring a new complaint “if this same thing should recur.” (*Id.*). Defendant has filed no response to Plaintiff’s construed motion to voluntarily dismiss without prejudice. In addition, dismissal without prejudice is appropriate under Defendant’s original motion to dismiss based upon Plaintiff’s failure to exhaust her administrative remedies.

Accordingly, **IT IS RECOMMENDED THAT:**

1. Defendant’s motion to dismiss (Doc. 3) be **GRANTED**; and
2. This case be **DISMISSED WITHOUT PREJUDICE**, and be administratively closed.

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P 72(b), any party may serve and file specific, written objections to this Report and Recommendation (“R&R”) within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).